

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.660 pertaining to nutrient standard)
variances)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On February 23, 2018, the Department of Environmental Quality published MAR Notice No. 17-396, pertaining to the public hearings on the proposed amendment of the above-stated rule at page 377 of the 2018 Montana Administrative Register, Issue No. 4.

2. The department has amended ARM 17.30.660 as proposed and the individual variance sections of Department Circular DEQ-12B but with changes to the individual variance sections of Department Circular DEQ-12B in response to public comments as further explained below. Comments received were regarding Department Circular DEQ-12B and specific changes are reflected in the Circular.

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT NO. 1: The City of Whitefish (Whitefish) supports the rule change.

RESPONSE: The department appreciates the comment.

COMMENT NO. 2: The department should clarify how Whitefish's individual variance limits of 1 mg TP/L and 10 mg TN/L will be implemented in permits; specifically, what will be the basis of the averaging period.

RESPONSE: Variance limits will be expressed in the permit as an average monthly limit, as a load. Regarding the averaging period, the department considers variance treatment requirements (1 mg TP/L and 10 mg TN/L in this case) to be averages achieved over the long-term (long-term averages; LTA). As such, a variance limit is computed as follows: LTA X Table 5-2 value X design flow X conversion factors = average monthly limit (lb/day). The Table 5-2 value is from the EPA permitting guidance that the department uses and is based on the coefficient of variation (CV) of the quality of the facility's discharge. A CV of 0.6 may be used for computing Whitefish's variance limit as noticed in this rulemaking (see Table 12B-3 in Department Circular DEQ-12B). The Whitefish permit also includes a TP limit based upon Montana's Nondegradation Policy. When updating permit requirements, the department includes the most stringent applicable requirement. For Whitefish, based upon current information, the most stringent requirement is the nondegradation-based TP limit. No modification to Department Circular DEQ-12B was made as a result of this comment.

COMMENT NO. 3: To comply with the triennial review requirement of the federal Clean Water Act, it is recommended that the department modify Whitefish's individual variance start date to 2018 or 2020 instead of the currently proposed 2022.

RESPONSE: Whitefish is currently authorized to discharge under the terms of a state-issued discharge permit and a general nutrient standards variance has been implemented therein. Whitefish's current discharge permit expires on 7/31/2020. The department agrees with the recommendation and will modify the start date in Table 12B-3 of Department Circular DEQ-12B to 8/1/2020. In the proposed rule, the department had established the start date as 8/1/2022 to account for the expected start-up of Whitefish's new facility.

COMMENT NO. 4: The department should provide documentation rationalizing the term of the individual variance for Whitefish.

RESPONSE: Per response to Comment No. 3, the individual variance start date for Whitefish will be modified to begin 8/1/2020. The new plant is not expected to be operational until mid- to late 2021, at the earliest. There will be a one-year period during which operational adjustments are made as operators become familiar with the system. Following plant stabilization, a pollutant minimization program (which includes optimization through advanced operational strategies) will be identified and developed through 2025. The pollutant minimization program will be submitted to the department and, upon approval, will be included as a condition of permit renewal. By 2029, the improvements to effluent quality should be evident and the department will have sufficient data to be able to compute a representative long-term average for the facility's effluent and expects Whitefish to be meeting the HAC requirements. See response to Comment No. 2 for details on long-term averages. No modification to Department Circular DEQ-12B was made as a result of this comment.

COMMENT NO. 5: The department's work to align the individual variance language of Department Circular DEQ-12B with federal requirements at 40 CFR 131.14 is appreciated.

RESPONSE: The department appreciates the comment.

4. The proposed changes to Department Circular DEQ-12B also included several non-substantive clerical changes to the general variance sections. Because the proposed changes were not explained in the reasonable necessity statement, the department has determined it will not adopt these changes. This amendment, therefore, makes no change to the general variance sections of Department Circular DEQ-12B.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State May 29, 2018.